

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Christopher R. Bush, Rafael E. Andrade,
Dallas A. Germundson, Garret P. Decker,
Anton R.J. Beltran, Caryn R. Gangi,
Samuel D. Untalasco, and Thomas B.
Brown, individually, and on behalf of all
others similarly situated,

Plaintiffs,

vs.

Globaltranz Enterprises, Inc., Andrew J.
Leto, and Michael Leto,

Defendants.

CASE NO. 2:15-cv-00536-DJH

**ORDER APPROVING PLAINTIFFS'
FLSA COLLECTIVE ACTION
SETTLEMENT**

Having considered the Plaintiffs' Motion for Approval of FLSA Collective Action Settlement and Memorandum of Points and Authorities in Support (Doc. 82), Plaintiffs' Notice of Filing Supplemental Documents (Doc. 85), the arguments contained therein, and the law, and there being no opposition thereto (Doc. 82 at 2:15), **THE COURT HEREBY GRANTS** said Motion (Doc. 82) and further enters this Settlement Approval Order. **The Court FINDS, CONCLUDES, and ORDERS as follows:**¹

I. NATURE OF ACTION

Plaintiffs allege that GlobalTranz misclassified them and the Opt-Ins as exempt from overtime under the FLSA, 29 U.S.C. § 201, et seq. and, on that basis, failed to pay

¹ Except as otherwise specified herein, the Court for purposes of this Settlement Approval Order adopts all defined terms set forth in the Settlement.

1 them and the Opt-Ins overtime wages.

2 GlobalTranz denies each of the allegations in the First Amended Complaint and
3 denies that any Plaintiff or Opt-In is entitled to recovery. GlobalTranz also denies that
4 this action may be properly maintained as a collective action under the FLSA.

5 **II. JURISDICTION**

6 This Court has jurisdiction over the subject matter of this litigation and all related
7 matters and all state and federal claims raised in this action and/or released in the
8 Settlement, and personal jurisdiction over GlobalTranz and all Plaintiffs and Opt-Ins.
9 Specifically, this Court has federal question jurisdiction over this action pursuant to 28
10 U.S.C. § 1331; section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §
11 216(b).

12 This Court also has supplemental jurisdiction over all state-law claims that could
13 have been asserted by Plaintiffs because the state-law claims derive from a common
14 nucleus of operative fact and form part of the same case or controversy as those claims
15 over which the Court has primary jurisdiction. *See* 28 U.S.C. § 1367 (providing for
16 supplemental jurisdiction over related state-law claims that “form part of the same case or
17 controversy”); *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1996) (federal courts
18 have supplemental jurisdiction over state law claims that arise from the same “common
19 nucleus of operative fact” such that the parties “would ordinarily be expected to try them
20 all in one judicial proceeding”).

21 This Court also has jurisdiction to approve the Settlement’s release of claims by
22 Opt-Ins over which the Court has jurisdiction, even if the Court would not independently
23 have jurisdiction over those released claims. *See Grimes v. Vitalink Communications*, 17
24 F.3d 1553, 1563 (3d Cir. 1994) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
25 1287-88 (9th Cir. 1992) (“[A] federal court may release not only claims alleged in the
26 complaint, but also state claims arising from the same nucleus of operative facts over
27 which the court would not have jurisdictional competence.”); *Reyn’s Pasta Bella, LLC v.*

1 *Visa USA, Inc.*, 442 F.3d 741, 748 (9th Cir. 2006) (quoting *Class Plaintiffs*, 955 F.2d at
2 1287-89).

3 **III. APPROVAL OF SETTLEMENT**

4 The Court has reviewed the terms of the Settlement, including the \$640,000.00
5 Settlement amount, the plan of allocation, and the release of claims. The Court has also
6 read and considered Plaintiffs' Motion for Collective Action Settlement Approval and its
7 supporting memoranda and evidence, including the declaration of Clifford P. Bendau, II
8 in support of Settlement Approval. Based on review of those papers, and the Court's
9 familiarity with this case, the Court finds and concludes that the Settlement is the result
10 of arms-length negotiations between the Parties, conducted under the supervision of an
11 experienced, independent mediator, after Plaintiffs' Counsel had adequately investigated
12 Plaintiffs' and the Opt-Ins' claims and become familiar with their strengths and
13 weaknesses. The assistance of an experienced mediator in the settlement process
14 confirms that the Settlement is non-collusive.

15 The Court finds and determines that the payments to be made to the Opt-Ins as
16 provided for in the Settlement are fair and reasonable. The proposed plan of allocation is
17 rationally related to the relative strengths of the respective claims asserted.

18 The Settlement is not a concession or admission, and shall not be used or
19 construed against GlobalTranz as an admission or indication with respect to any claim of
20 any fault or omission by GlobalTranz.

21 **IV. APPROVAL OF THE NOTICE PROGRAM**

22 Plaintiffs have also submitted for this Court's approval a proposed Notice of
23 Settlement (submitted as Exhibit B to Plaintiffs' Notice of Filing Supplemental
24 Documents) (Doc. 85-2 at 2-4).

25 The Notice is the best notice practicable under the circumstances. The Notice
26 fairly, plainly, accurately, and reasonably informs Opt-Ins of: (1) appropriate information
27 about the nature of this action, the definitions of Covered Position and Covered Periods,

1 the identity of Plaintiffs' Counsel, and the essential terms of the Settlement, including the
 2 plan of allocation; (2) appropriate information about the amounts being allocated to
 3 Plaintiffs as Service Payments and to Plaintiffs' Counsel's as attorneys' fees and costs;
 4 and (3) appropriate instructions as to how to obtain additional information regarding this
 5 action and the Settlement.

6 The proposed plan for distributing the Notice likewise is a reasonable method
 7 calculated to reach all individuals who would be bound by the Settlement. Under this
 8 plan, the Settlement Administrator will distribute the Notice and Settlement Share checks
 9 to all Opt-Ins by first-class mail to their last known addresses. There is no additional
 10 method of distribution that would be reasonably likely to notify Opt-Ins who may not
 11 receive notice pursuant to the proposed distribution plan. In addition, the Settlement
 12 Administrator will take reasonable steps to locate Opt-Ins who do not promptly cash their
 13 Settlement Share checks.

14 Accordingly, the Court finds and concludes that the proposed plan for distributing
 15 the Notice will provide the best notice practicable and satisfies all legal and due process
 16 requirements.

17 **V. PLAINTIFFS' AND OPT-INS' RELEASE OF CLAIMS**

18 The Court has reviewed the release in section 12 of the Stipulation of Settlement
 19 and finds it to be fair, reasonable, and enforceable under the FLSA and all other
 20 applicable law. Plaintiffs and every Opt-In shall, pursuant to the Settlement, be bound by
 21 the release of claims as set forth in the Settlement, regardless of whether a Plaintiff or
 22 Opt-in cashes or deposits his or her settlement check.

23 **VI. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

24 Optime Administration, LLC, is hereby appointed Settlement Administrator to
 25 carry out the duties set forth in this Order of Approval and the Stipulation of Settlement.
 26 The Court hereby authorizes Optime Administration, LLC's administration fee to be paid
 27 for from the Settlement Amount.

1 **VII. SERVICE PAYMENTS TO THE NAMED PLAINTIFFS**

2 The Court approves the service payments to the ten Named Plaintiffs as set forth
 3 under the Settlement. The Court finds and determines that the awards of \$20,000,
 4 \$10,000, and \$2,500 to Named Plaintiffs Bush, Beltran, and Germundson, respectively,
 5 are fair and reasonable. The Court further finds and determines that the awards of \$1,000
 6 each to Named Plaintiffs Andrade, Decker, Gangi, Untalasco, Brown, Yabes, and
 7 D'Andelet, respectively, are fair and reasonable. The Court further finds and determines
 8 that the awards of \$1,000 each to Opt-In Plaintiffs Shoemaker, Garcia, Latto, Maldonado,
 9 Boone, Marsh, and Trivedi, respectively, are fair and reasonable.

10 These Plaintiffs have taken significant actions to protect the interests of the Opt-
 11 Ins, and the Opt-Ins have benefited considerably from those actions. Furthermore, these
 12 Plaintiffs have expended considerable time and effort in pursuing the litigation, as
 13 enumerated in Plaintiffs' Unopposed Motion for Approval of FLSA Collective Action
 14 Settlement. Furthermore, Plaintiffs' Counsel attest that these Named and Opt-In Plaintiffs
 15 were substantially involved throughout the litigation, educating Plaintiffs' counsel on
 16 Opt-Ins' job duties and GlobalTranz's policies and procedures. Plaintiffs submitted
 17 declarations regarding their GlobalTranz work experiences, which contributed to the
 18 Settlement. Plaintiffs' depositions were taken by Defendant. Plaintiffs Bush and Beltran
 19 also attended and assisted in the Parties' mediation session.

20 **VIII. PLAINTIFFS' COUNSEL'S AWARD OF FEES AND COSTS**

21 The Court finds and determines that the payment of \$213,333.33 in attorneys' fees
 22 (or 33 1/3% of the fund) and \$41,000.66 in litigation costs and expenses, for a total
 23 payment of \$254,333.99 to Plaintiffs' Counsel, is fair and reasonable. *See Vizcaino v.*
 24 *Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Chemical Bank v. City of Seattle*
 25 *(In re Washington Public Power Supply Sec. Litig.)*, 19 F.3d 1291, 1297 (9th Cir. 1994);
 26 *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989); *Six Mexican*
 27 *Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

